

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**THEODORE KING, et al.,**

**Plaintiffs,**

**ORDER**

**-against-**

**04-CV-4565 (ARR)**

**TUCCI EQUIPMENT RENTAL CORP.,**

**Defendant.**

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Currently pending before this Court, on a referral from Judge Ross, is plaintiffs' motion for a default judgment. The Court is in receipt of plaintiffs' motion and inquest papers and defendant's opposition thereto. Among other things, defendant contends that it did not receive notice of the pendency of this lawsuit until after plaintiffs had moved for a default judgment, and it contests plaintiffs' calculations of the amounts owing.

In view of the foregoing, and based on the record developed to date, it appears that the fair and just solution would be to allow discovery as to the amount of the delinquency. Therefore, counsel are directed to confer in good faith and to notify the Court, in writing, via ECF, by 4/26/05, whether (1) plaintiffs will withdraw their motion for a default judgment and consent to the filing of defendant's answer<sup>1</sup>; (2) defendant will stipulate that delinquencies exist, and (3) the parties will litigate the amounts owing. If the parties so agree, they shall

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<sup>1</sup> Significantly, although the Clerk of the Court noted defendant's default, the District Court has not entered a default judgment (within the meaning of Fed. R. Civ. P. 55(b)(2) and 60) but instead referred the motion for a default judgment to this magistrate judge for a Report and Recommendation.

include in their letter to the Court a proposed schedule for discovery. If the parties do not so agree, the Court will set a date for oral argument on defendant's motion for a default judgment.

**SO ORDERED.**

**Dated: Brooklyn, New York  
April 20, 2005**

*/s/*  
**ROANNE L. MANN**  
**UNITED STATES MAGISTRATE JUDGE**